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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

In re J.C., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.C.,

Defendant and Appellant.

A154389

(Contra Costa County  
Super. Ct. No. J1-800375)

J.C. appeals from the juvenile court’s disposition order, arguing certain requirements violate constitutional separation of powers and due process provisions. We affirm.

**BACKGROUND**

Following a Welfare and Institutions Code section 602<sup>1</sup> petition, appellant admitted to carjacking with a personal firearm use enhancement. (Pen. Code, §§ 215, subd. (a), 12022, subd. (b)(2).) The probation officer recommended the juvenile court adjudge appellant a ward of the court, remove him from parental custody, and commit him to a county institution “for a period not to exceed maximum custody time of 12

<sup>1</sup> All undesignated section references are to the Welfare and Institutions Code.

years, or until age 21, whichever occurs first.”<sup>2</sup> The probation officer further recommended the juvenile court order the following: “Minor to participate in the County Institution Program, YOTP [Youthful Offender Treatment Program], minor must successfully complete all phases of the program, follow all treatment requirements, and obey all rules and regulations.”

At the May 2018 disposition hearing, appellant’s counsel objected to the “indefinite [YOTP] commitment. YOTP is a ten-month program . . . , and I believe a commitment then for ten months would be more appropriate.” The probation officer responded that YOTP is a ten-month program only “if everything is done correctly and he progresses, but that’s not a guarantee that it’s a ten-month program. It depends on him.”

The juvenile court declined to order a fixed term of commitment: “YOTP is not a program that necessarily is a 10-month program. . . . Not everyone progresses to the next level or phase at exactly the same time and it really depends on how well each person, individual is doing in the program itself.” The court later added that if appellant “has what would be called a perfect program, sounds like it would be closer to ten months. If he does not have a perfect program I can’t say it will be that amount. It could be longer. The key is to completely, successfully complete all phases of the program, and obviously there [is] the maximum period he could be held and that would be basically until his 21st birthday, and I’m sure he will have completed YOTP before then.” The court adopted the probation officer’s recommended orders on this issue. The court further set a “YOTP review date” for December 2018, seven months away, “to see how [appellant] is doing.”

## DISCUSSION

Appellant argues the disposition order “improperly delegates determination of the length of a commitment to a probation officer,” thereby violating constitutional separation of powers and due process provisions. We disagree.<sup>3</sup>

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<sup>2</sup> Appellant was 16 years old at the time of disposition.

<sup>3</sup> We need not decide whether appellant forfeited the argument, as the People contend.

When a juvenile court places a minor on probation, “[t]he court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (§ 730, subd. (b).) “Probation officers have wide discretion to enforce court-ordered conditions . . . .” (*In re Pedro Q.* (1989) 209 Cal.App.3d 1368, 1373.)

As an initial matter, we query the extent of the juvenile court’s delegation of authority to the probation officer. The juvenile court set a “YOTP review hearing” seven months after disposition, indicating the court will be monitoring appellant’s progress in the program. At the review hearing, both the probation officer and appellant will presumably have the opportunity to inform the court of appellant’s progress. Under such circumstances, the juvenile court has not delegated unfettered discretion over the length of appellant’s confinement to the probation officer.

Moreover, while appellant asserts that determining the precise length of a commitment “is the province of the juvenile court,” *In re Ricardo M.* (1975) 52 Cal.App.3d 744 (*Ricardo M.*) holds otherwise. In that case, “[t]he judge conditioned the probation upon Ricardo’s spending not less than 5 nor more than 20 days in juvenile hall, the exact amount of time to be determined by the juvenile hall staff [under the management and control of the probation officer] based upon Ricardo’s attitude and cooperation. The order recites that it is its intent that Ricardo be detained for the minimum period if his attitude and cooperation are ‘adequate.’ ” (*Id.* at p. 747.) The Court of Appeal held the order, which left the “exact duration [of the confinement] to the discretion of the . . . probation officer,” was a permissible delegation of discretion. (*Id.* at p. 752.) Appellant argues *Ricardo M.* is distinguishable because the commitment range in that case was shorter than the one here. But nothing in *Ricardo M.* suggests a court’s ability to delegate the exact duration of a commitment within a specified range depends on the length of the range. Even if we accepted the distinction urged by appellant, we would affirm. Though the commitment range in this case is substantially longer than the one in *Ricardo M.*, the delegation of discretion is *less* troubling here. In *Ricardo M.*, the probation officer’s assessment of the minor’s “attitude and cooperation”

determined the length of commitment. (*Ricardo M.*, *supra*, 52 Cal.App.3d at p. 747.) This direction was vague and its ultimate purpose unclear. In contrast, appellant's commitment was set as a range instead of a definite period in order to enable him to successfully complete, at his own pace, an established program for his rehabilitation. This goal is a worthy one that we are not inclined to thwart, particularly given the judicial review set out in the order.

Appellant relies on cases finding improper delegation, but none involve the determination of the exact length of commitment within a range or suggest that delegating such a determination is improper. (See *In re Debra A.* (1975) 48 Cal.App.3d 327, 330 ["place of detention" cannot be delegated]; *People v. Cervantes* (1984) 154 Cal.App.3d 353, 358 ["propriety, amount, and manner of payment of restitution" cannot be delegated]; *In re James R.* (2007) 153 Cal.App.4th 413, 417 ["all decisions regarding family visits" to out-of-home placement cannot be delegated].) Two additional cases relied on by appellant are also inapposite. *People v. Hernandez* (1984) 160 Cal.App.3d 725, which held "the severity of the sentence . . . rest[s] in the sound discretion of the trial court," did not involve a probationary sentence. (*Id.* at pp. 736, 749.) *U.S. v. Stephens* (9th Cir. 2005) 424 F.3d 876, which held that " 'a probation officer may not decide the nature or extent of the punishment imposed upon a probationer,' " further held that, once a court "imposed mandatory [drug] treatment and treatment program urinalysis" as a condition of probation, it "may properly delegate to the probation officer the responsibility for selecting the program" and may leave to the "drug treatment professionals . . . the responsibility to design the course of treatment, including the frequency of in-[program drug] testing, to ensure that the treatment is effective." (*Id.* at pp. 881–883.) Under the circumstances presented here, where the juvenile court will monitor appellant's progress in YOTP, there is no improper delegation.

Appellant also argues that an extended commitment because of his failure to successfully complete YOTP within ten months is, in effect, a commitment for violating his probation conditions without notice or a hearing, as required by section 777 and due process. Section 777 provides: "An order changing or modifying a previous order by

removing a minor from the physical custody of a parent . . . and directing . . . commitment to a county institution . . . shall be made only after a noticed hearing.” The juvenile court’s disposition order does not authorize the probation officer to “chang[e] or modify[] a previous order” or “remov[e]” appellant from the physical custody of his parents. Instead, it is properly construed as ordering appellant committed until his 21st birthday, unless he successfully completes YOTP, in which case he shall be released earlier. The noticed hearing for probation violations required by section 777 and due process has no bearing on the case at hand.

#### DISPOSITION

The order is affirmed.

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SIMONS, J.

We concur.

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JONES, P.J.

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BURNS, J.

(A154389)